

Short Title: Revised Uniform Athlete Agents Act.

A BILL TO BE ENTITLED

AN ACT TO ENACT THE REVISED UNIFORM ATHLETE AGENTS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 9 of Chapter 78C of the General Statutes is repealed.

SECTION 2. Chapter 78C of the General Statutes is amended by adding a new

Article to read:

"Article 10.

"Revised Uniform Athlete Agents Act.

"§ 78C-111. Short title.

This Article may be cited as the Revised Uniform Athlete Agents Act.

"§ 78C-112. Definitions.

The following definitions apply in this Article:

(1) Agency contract. – An agreement that authorizes a person to negotiate or solicit on behalf of an individual a professional-sports-services contract or endorsement contract.

(2) Athlete agent. –

a. An individual, whether or not registered under this Article, who does any of the following:

1. Directly or indirectly recruits or solicits a covered athlete to enter into an agency contract, including recruiting or soliciting through the covered athlete's parent, guardian, coach, family member, friend, or any other individual in a position to influence the covered athlete.

1a. For compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for a covered athlete as a professional athlete or member of a professional sports team or organization.

2. For compensation or in anticipation of compensation related to a covered athlete's participation in athletics, does any of the following:

I. Serves the covered athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions, unless the individual is an employee of an educational institution acting exclusively as an employee of the educational institution for the benefit of the educational institution.

II. Manages the business affairs of the covered athlete by providing assistance with bills, payments, contracts, or taxes.

3. In anticipation of representing a covered athlete for a purpose related to the covered athlete's participation in athletics, does any of the following:

I. Gives consideration to the covered athlete or another person.

II. Serves the covered athlete in an advisory capacity on a matter related to finances, business pursuits, or career management decisions.

III. Manages the business affairs of the covered athlete by providing assistance with bills, payments, contracts, or taxes.

4. Represents to the public that the individual is an athlete agent.

b. The term "athlete agent" does not include an individual who does any of the following:

1. Acts solely on behalf of a professional sports team or organization.

2. Is a licensed, registered, or certified professional and offers or provides services to a covered athlete customarily provided by members of the profession, unless the individual does any of the following:

I. Also directly or indirectly recruits or solicits the covered athlete to enter into an agency contract.

II. Also, for compensation, procures employment or offers, promises, attempts, or negotiates to obtain employment for the covered athlete as a professional athlete or member of a professional sports team or organization.

III. Receives consideration for providing the services calculated using a different method than for an individual who is not a covered athlete.

(3) Athletic director. – The individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female

students, the athletic program for males or the athletic program for females,
as appropriate.

(4) Reserved.

(5) Reserved.

(5a) Covered athlete. – A student athlete or a former student athlete.

(6) Educational institution. – Includes a public or private elementary school,
secondary school, technical or vocational school, community college, college,
and university.

(7) Endorsement contract. – An agreement under which an individual is employed
or receives consideration to use on behalf of the other party any value that the
individual may have because of publicity, reputation, following, or fame
obtained because of athletic ability or performance.

(8) Enrolled. – Registered for courses and attending athletic practice or class.
"Enrolls" has a corresponding meaning.

(8a) Former student athlete. – Any of the following:

a. An individual who is ineligible to engage in an interscholastic or
intercollegiate sport only because the individual engaged in one or
more of the following activities and who would otherwise qualify as a
student athlete:

1. The individual entered into an agency contract or made a
commitment to enter into an agency contract in the future.

2. The individual entered into a professional-sports-services
contract or an endorsement contract.

3. The individual accepted anything of value from an athlete
agent.

b. An individual who exhausted the individual's eligibility to engage in an interscholastic or intercollegiate sport within the preceding six months, whether or not the individual is still enrolled in an educational institution.

(9) Intercollegiate sport. – A sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association that promotes or regulates collegiate athletics.

(10) Interscholastic sport. – A sport played between educational institutions that are not community colleges, colleges, or universities.

(11) Licensed, registered, or certified professional. – An individual licensed, registered, or certified as an attorney, dealer in securities, financial planner, insurance agent, real estate broker or sales agent, tax consultant, accountant, or member of a profession, other than that of athlete agent, who is licensed, registered, or certified by the State or a nationally recognized organization that licenses, registers, or certifies members of the profession on the basis of experience, education, or testing.

(12) Person. – An individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, business trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.

(13) Professional-sports-services contract. – An agreement under which an individual is employed as a professional athlete or agrees to render services as a player on a professional sports team or with a professional sports organization.

(14) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) Recruit or solicit. – Attempt to influence the choice of an athlete agent by a covered athlete or, if the covered athlete is a minor, a parent or guardian of the covered athlete. The term does not include giving advice on the selection of a particular athlete agent in a family or coaching situation unless the individual giving the advice does so because of the receipt or anticipated receipt of an economic benefit, directly or indirectly, from the athlete agent.

(16) Registration. – Registration as an athlete agent under this Article.

(17) Sign. – With present intent to authenticate or adopt a record, to do any of the following:

a. Execute or adopt a tangible symbol.

b. Attach to or logically associate with the record an electronic symbol, sound, or process.

(18) State. – A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(19) Student athlete. – An individual who is eligible to attend an educational institution and engages in, is eligible to engage in, or may be eligible in the future to engage in, any interscholastic or intercollegiate sport. The term does not include an individual permanently ineligible to participate in a particular interscholastic or intercollegiate sport for that sport.

"§ 78C-113. Secretary of State; authority; procedure.

(a) Chapter 150B of the General Statutes applies to this Article. The Secretary of State may adopt rules under Chapter 150B of the General Statutes to implement this Article.

(b) By acting as an athlete agent in this State, a nonresident individual appoints the Secretary of State as the individual's agent for service of process in any civil action in this State related to the individual acting as an athlete agent in this State.

(c) The Secretary of State may issue a subpoena for material that is relevant to the administration of this Article.

"§ 78C-114. Athlete agent; registration required; void contract.

(a) Except as otherwise provided in subsection (b) of this section, an individual shall not act as an athlete agent in this State without holding a certificate of registration under this Article.

(b) Before being issued a certificate of registration under this Article, an individual may act as an athlete agent in this State for all purposes except entering into an agency contract, whether valid or invalid, or accepting a commitment from a covered athlete to enter into an agency contract in the future, if all of the following occur:

(1) A covered athlete or another person acting on behalf of the covered athlete initiates communication with the individual.

(2) Not later than seven days after an initial act that requires the individual to register as an athlete agent, the individual submits an application for registration as an athlete agent in this State.

(c) An agency contract resulting from conduct in violation of this section is void, and the athlete agent shall return any consideration received under the agency contract. The covered athlete and the covered athlete's parent or guardian are not required to return any consideration received by any of them from the athlete agent to influence the covered athlete to enter into the agency contract.

"§ 78C-115. Registration as athlete agent; application; requirements.

(a) An applicant for registration as an athlete agent must submit an application for registration to the Secretary of State in a form prescribed by the Secretary of State. The applicant

1 must be an individual, and the application must be signed by the applicant under penalty of
2 perjury. The application must contain at least the following:

3 (1) The name, Social Security number, and date and place of birth of the applicant
4 and the following contact information for the applicant:

5 a. The address of the applicant's principal place of business.

6 a1. Home address.

7 b. Work and mobile telephone numbers.

8 c. Any means of communicating electronically, including a facsimile
9 number, electronic mail address, and personal and business or
10 employer Web sites.

11 (2) The name of the applicant's business or employer, if applicable, including, for
12 each business or employer, its mailing address, telephone number,
13 organization form, and the nature of the business.

14 (3) Each social-media account with which the applicant or the applicant's business
15 or employer is affiliated.

16 (4) Each business or occupation in which the applicant engaged within five years
17 before the date of the application, including self-employment and employment
18 by others, and any professional or occupational license, registration, or
19 certification held by the applicant during that time.

20 (5) A description of the applicant's:

21 a. Formal training as an athlete agent.

22 b. Practical experience as an athlete agent, in detail.

23 c. Educational background relating to the applicant's activities as an
24 athlete agent.

(6) The name of each athlete for whom the applicant acted as an athlete agent within five years before the date of the application or, if the individual is a minor, the name of the parent or guardian of the minor, together with the athlete's sport and last-known team.

(6a) The name of each athlete who terminated an agency contract or other professional agreement with the applicant or the applicant's then-employing organization within five years before the date of the application.

(6b) The name of each athlete whose agency contract or professional agreement with the applicant or the applicant's then-employing organization was terminated by the applicant or the applicant's then-employing organization within five years before the date of the application.

(7) The name and address of each person to which any of the following apply:

a. Is a partner, member, officer, manager, associate, or profit sharer or directly or indirectly holds an equity interest of five percent (5%) or greater of the athlete agent's business if it is not a corporation.

b. Is an officer or director of a corporation employing the athlete agent or a shareholder having an interest of five percent (5%) or greater in the corporation.

(8) A description of the status of any application by the applicant, or any person named under subdivision (7) of this subsection, for a state or federal business, professional, or occupational license, other than as an athlete agent, from a state or federal agency, including any denial, refusal to renew, suspension, withdrawal, or termination of the license and any reprimand or censure related to the license.

- (9) Whether the applicant, or any person named under subdivision (7) of this subsection, has pleaded guilty or no contest to, has been convicted of, or has charges pending for, a crime that would involve moral turpitude or be a felony if committed in this State and, if so, identification of all the following:
- a. The crime.
 - b. The law enforcement agency involved.
 - c. If applicable, the date of the conviction and the fine or penalty imposed.
- (10) Whether, within 15 years before the date of application, the applicant, or any person named under subdivision (7) of this subsection, has been a defendant or respondent in a civil proceeding, including a proceeding seeking an adjudication of incompetence and, if so, the date and a full explanation of each proceeding.
- (11) Whether the applicant, or any person named under subdivision (7) of this subsection, has an unsatisfied judgment or a judgment of continuing effect, including alimony or a domestic order in the nature of child support, which is not current at the date of the application.
- (12) Whether, within 10 years before the date of application, the applicant, or any person named under subdivision (7) of this subsection, has filed a petition in bankruptcy or was an owner of a business that has filed a petition in bankruptcy.
- (13) Whether there has been any administrative or judicial determination that the applicant, or any person named under subdivision (7) of this subsection, made a false, misleading, deceptive, or fraudulent representation.

(14) Each instance in which conduct of the applicant, or any person named under subdivision (7) of this subsection, resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic, intercollegiate, or professional athletic event on a covered athlete or a sanction on an educational institution.

(15) Each sanction, suspension, or disciplinary action taken against the applicant, or any person named under subdivision (7) of this subsection, arising out of occupational or professional conduct.

(16) Whether there has been a denial of an application for, suspension or revocation of, refusal to renew, or abandonment of, the registration or licensure of the applicant, or any person named under subdivision (7) of this subsection, as an athlete agent in any state.

(17) Each state in which the applicant currently is registered or licensed as an athlete agent or has applied to be registered or licensed as an athlete agent.

(18) If the applicant is certified or registered by a professional league or players association, all of the following:

a. The name of the league or association.

b. The date of certification or registration, and the date of expiration of the certification or registration, if any.

c. If applicable, the date of any denial of an application for, suspension or revocation of, refusal to renew, withdrawal of, or termination of, the certification or registration or any reprimand or censure related to the certification or registration.

(19) Any additional information required by the Secretary of State.

(b) through (d) Reserved.

"§ 78C-116. Certificate of registration; issuance or denial; renewal.

(a) Except as otherwise provided in subsection (b) of this section, the Secretary of State shall issue a certificate of registration to an applicant for registration who complies with G.S. 78C-115(a).

(b) The Secretary of State may refuse to issue a certificate of registration to an applicant for registration under G.S. 78C-115(a) if the Secretary of State determines that the applicant has engaged in conduct that significantly adversely reflects on the applicant's fitness to act as an athlete agent. In making the determination, the Secretary of State may consider whether the applicant has done any of the following:

(1) Pleaded guilty or no contest to, has been convicted of, or has charges pending for, a crime that would involve moral turpitude or be a felony if committed in this State.

(2) Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent.

(3) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity.

(4) Engaged in conduct prohibited by G.S. 78C-124.

(5) Had a registration or licensure as an athlete agent suspended, revoked, or denied in any state.

(6) Been refused renewal of registration or licensure as an athlete agent in any state.

(7) Engaged in conduct resulting in imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic, intercollegiate, or professional athletic event on a covered athlete or a sanction on an educational institution.

(8) Engaged in conduct that adversely reflects on the applicant's credibility,
honesty, or integrity.

(c) In making a determination under subsection (b) of this section, the Secretary of State
shall consider all of the following:

(1) How recently the conduct occurred.

(2) The nature of the conduct and the context in which it occurred.

(3) Other relevant conduct of the applicant.

(d) An athlete agent registered under subsection (a) of this section may apply to renew
the registration by submitting an application for renewal in a form prescribed by the Secretary of
State. The applicant shall sign the application for renewal under penalty of perjury and include
current information on all matters required in an original application for registration.

(e) Reserved.

(f) A certificate of registration or renewal of registration under this Article is valid for
one year.

"§ 78C-117. Suspension, revocation, or refusal to renew registration.

(a) The Secretary of State may limit, suspend, revoke, or refuse to renew a registration
of an individual registered under G.S. 78C-116(a) for conduct that would have justified refusal
to issue a certificate of registration under G.S. 78C-116(b) or for any other violation of this
Article or the rules adopted under it. In making a determination under this section, the Secretary
of State shall consider the factors in G.S. 78C-116(c).

(b) Reserved.

"§ 78C-118. Temporary registration.

The Secretary of State may issue a temporary certificate of registration as an athlete agent
while an application for registration or renewal of registration is pending.

"§ 78C-119. Registration and renewal fees.

An application for registration or renewal of registration as an athlete agent must be accompanied by a fee in the following amount:

(1) Initial application for registration \$200.00

(2) Application for renewal of registration \$200.00.

"§ 78C-120. Required form of agency contract.

(a) An agency contract must be in a record signed by the parties.

(b) An agency contract must contain all of the following:

(1) A statement that the athlete agent is registered as an athlete agent in this State and a list of any other states in which the athlete agent is registered or licensed as an athlete agent.

(2) The amount and method of calculating the consideration to be paid by the covered athlete for services to be provided by the athlete agent under the agency contract and any other consideration the athlete agent has received or will receive from any other source for entering into the agency contract or providing the services.

(3) The name of any person not listed in the athlete agent's application for registration or renewal of registration that will be compensated because the covered athlete signed the agency contract.

(4) A description of any expenses the covered athlete agrees to reimburse.

(5) A description of the services to be provided to the covered athlete.

(6) The duration of the agency contract.

(7) The date of execution.

(c) Subject to subsection (g) of this section, an agency contract must contain a conspicuous notice in boldface type and in substantially the following form:

"Warning

If you sign this contract:

(1) You may lose your eligibility to compete as a student athlete in your sport;

(2) If you have an athletic director or had an athletic director within the preceding six months, within 72 hours after signing this contract or before the next scheduled athletic event in which you participate, whichever occurs first, both you and your athlete agent must notify your athletic director that you have entered into this contract and provide the name and contact information of the athlete agent;

(3) You may cancel this contract within 14 days after signing it. Cancellation of this contract may not reinstate your eligibility as a student athlete in your sport."

(d) An agency contract must be accompanied by a separate record signed by the covered athlete or, if the covered athlete is a minor, the parent or guardian of the covered athlete acknowledging that signing the agency contract may result in the loss of the covered athlete's eligibility to participate in the covered athlete's sport as a student athlete.

(e) A covered athlete or, if the covered athlete is a minor, the parent or guardian of the covered athlete may void an agency contract that does not conform to this section. If the agency contract is voided, any consideration received from the athlete agent to induce entering into the agency contract is not required to be returned.

(f) At the time an agency contract is executed, the athlete agent must give the covered athlete or, if the covered athlete is a minor, the parent or guardian of the covered athlete a copy in a record of the agency contract and the separate acknowledgement required by subsection (d) of this section.

(g) If a covered athlete is a minor, an agency contract must be signed by the parent or guardian of the minor and the notice required by subsection (c) of this section must be revised accordingly.

(h) An agency contract that does not meet the requirements of this section is invalid.

"§ 78C-121. Notice to educational institution.

(a) In this section, "communicating or attempting to communicate" means contacting or attempting to contact by an in-person meeting, a record, or any other method that conveys or attempts to convey a message.

(b) Not later than 72 hours after entering into an agency contract, whether valid or invalid, or accepting a commitment from a covered athlete to enter into an agency contract in the future, or before the next scheduled athletic event in which the covered athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the agency contract or the commitment to the athletic director of the educational institution at which the covered athlete is enrolled, was most recently enrolled, or at which the athlete agent has reasonable grounds to believe the covered athlete intends to enroll.

(c) Not later than 72 hours after entering into an agency contract, whether valid or invalid, or making a commitment to enter into an agency contract in the future, or before the next scheduled athletic event in which the covered athlete may participate, whichever occurs first, the covered athlete shall inform the athletic director of the educational institution at which the covered athlete is enrolled or was most recently enrolled that the covered athlete has entered into the agency contract or has made the commitment and shall provide the name and contact information of the athlete agent.

(d) If an athlete agent enters into an agency contract with a covered athlete, whether valid or invalid, or accepts from a covered athlete a commitment to enter into an agency contract in the future and the covered athlete subsequently enrolls at an educational institution, the athlete

1 agent shall notify the athletic director of the educational institution of the existence of the agency
2 contract or **the commitment** not later than 72 hours after the athlete agent knew or should have
3 known the covered athlete enrolled.

4 (e) If an athlete agent has a relationship with a covered athlete before the covered athlete
5 enrolls in an educational institution and receives an athletic scholarship from the educational
6 institution, the athlete agent shall notify the educational institution of the relationship not later
7 than 10 days after the enrollment if the athlete agent knows or should have known of the
8 enrollment and any of the following has occurred:

9 (1) The relationship was motivated in whole or part by the intention of the athlete
10 agent to recruit or solicit the covered athlete to enter an agency contract in the
11 future.

12 (2) The athlete agent directly or indirectly recruited or solicited the covered
13 athlete to enter an agency contract before the enrollment.

14 (f) An athlete agent shall give notice in a record to the athletic director of any educational
15 institution at which a covered athlete is enrolled or was most recently enrolled before the athlete
16 agent communicates or attempts to communicate with any of the following:

17 (1) The covered athlete or, if the covered athlete is a minor, a parent or guardian
18 of the covered athlete to influence the covered athlete or parent or guardian to
19 enter into an agency contract.

20 (2) Another individual to have that individual influence the covered athlete or, if
21 the covered athlete is a minor, the parent or guardian of the covered athlete to
22 enter into an agency contract.

23 (g) If a communication or attempt to communicate with an athlete agent is initiated by a
24 covered athlete or another individual on behalf of the covered athlete, the athlete agent shall
25 notify in a record the athletic director of any educational institution at which the covered athlete

1 is enrolled or was most recently enrolled. The notification shall be made not later than 10 days
2 after the communication or attempt.

3 (g1) An athlete agent who knows or should have known of a violation of this Article that
4 could render a covered athlete ineligible to engage in an interscholastic or intercollegiate sport
5 shall, not later than 72 hours after becoming aware of the violation or before the next scheduled
6 athletic event in which the covered athlete may participate, whichever occurs first, give notice in
7 a record of the existence of the violation to the athletic director of the educational institution at
8 which the covered athlete is enrolled, was most recently enrolled, or at which the athlete agent
9 has reasonable grounds to believe the covered athlete intends to enroll.

10 (h) An educational institution that becomes aware of a violation of this Article by an
11 athlete agent shall give notice of the violation to the Secretary of State and any professional
12 league or players association with which the educational institution is aware the athlete agent is
13 licensed or registered.

14 **"§ 78C-122. Covered athlete's right to cancel.**

15 (a) A covered athlete or, if the covered athlete is a minor, the parent or guardian of the
16 covered athlete may cancel an agency contract by giving notice in a record of cancellation to the
17 athlete agent not later than 14 days after the agency contract is signed.

18 (b) A covered athlete or, if the covered athlete is a minor, the parent or guardian of the
19 covered athlete may not waive the right to cancel an agency contract.

20 (c) If a covered athlete, parent, or guardian cancels an agency contract, the covered
21 athlete, parent, or guardian is not required to pay any consideration under the agency contract or
22 return any consideration received from the athlete agent to influence the covered athlete to enter
23 into the agency contract.

24 **"§ 78C-123. Required records.**

25 (a) An athlete agent shall create and retain for five years records of all the following:

(1) The name and address of each individual represented by the athlete agent.

(2) Each agency contract entered into by the athlete agent.

(3) The direct costs incurred by the athlete agent in the recruitment or solicitation
of each covered athlete to enter into an agency contract.

(b) Records described in subsection (a) of this section are open to inspection by the
Secretary of State during normal business hours.

"§ 78C-124. Prohibited conduct.

(a) An athlete agent, with the intent to influence a covered athlete or, if the covered
athlete is a minor, a parent or guardian of the covered athlete to enter into an agency contract,
shall not take any of the following actions or encourage any other individual to take or assist any
other individual in taking any of the following actions on behalf of the athlete agent:

(1) Give materially false or misleading information or make a materially false
promise or representation.

(2) Furnish anything of value to the covered athlete.

(3) Furnish anything of value to an individual other than the covered athlete or
another registered athlete agent.

(b) Unless registered under this Article, an athlete agent shall not intentionally (i) initiate
contact, directly or indirectly, with a covered athlete or, if the covered athlete is a minor, a parent
or guardian of the covered athlete to recruit or solicit the covered athlete, parent, or guardian to
enter into an agency contract in the present or in the future, or (ii) encourage any other individual
to do so on behalf of the athlete agent.

(c) An athlete agent shall not intentionally do any of the following or encourage any other
individual to do any of the following on behalf of the athlete agent:

(1) Reserved.

(2) Fail to create or retain or to permit inspection of the records required by G.S. 78C-123.

(3) Fail to register when required by G.S. 78C-114.

(4) Provide materially false or misleading information in an application for registration or renewal of registration.

(5) Predate or postdate an agency contract.

(6) Fail to notify a covered athlete or, if the covered athlete is a minor, a parent or guardian of the covered athlete, before the covered athlete, parent, or guardian enters into an agency contract for a particular sport that the agency contract may make the covered athlete ineligible to participate as a student athlete in that sport, whether the agency contract is in a signed record or is invalid for failure to be in a signed record.

(7) Fail to notify a covered athlete before seeking or accepting from a covered athlete a commitment to enter into an agency contract in the future for a particular sport that making the commitment may make the covered athlete ineligible to participate as a student athlete in that sport.

(d) An athlete agent shall not enter into an invalid agency contract or seek or accept from a covered athlete a commitment to enter into an agency contract in the future.

"§ 78C-125. Criminal penalty.

An athlete agent who violates any provision under G.S. 78C-124(a) or (b) is guilty of a Class H felony. An athlete agent who violates any provision under G.S. 78C-124(c) is guilty of a Class 1 misdemeanor.

"§ 78C-126. Civil remedy.

(a) An educational institution or covered athlete may bring an action for damages against an athlete agent if the educational institution or covered athlete is adversely affected by an act or

omission of the athlete agent in violation of this Article. An educational institution or covered athlete is adversely affected by an act or omission of the athlete agent only if, because of the act or omission, the educational institution or an individual who was a covered athlete at the time of the act or omission:

(1) Is suspended or disqualified from participation in an interscholastic or intercollegiate sports event by or under the rules of a state or national federation or association that promotes or regulates interscholastic or intercollegiate sports; or

(2) Suffers financial damage.

(b) A violation of this Article is an unfair or deceptive trade practice for purposes of Chapter 75 of the General Statutes.

(c) A plaintiff that prevails in an action under this section may recover actual damages and costs and any other remedies, including attorneys' fees, provided under Chapter 75 of the General Statutes. An athlete agent found liable under this section forfeits any right of payment for anything of benefit or value provided to the covered athlete and shall refund any consideration paid to the athlete agent by or on behalf of the covered athlete.

"§ 78C-127. Civil penalty; consideration factors.

(a) The Secretary of State may assess a civil penalty against an athlete agent not to exceed two hundred fifty thousand dollars (\$250,000) or the amount of consideration the athlete agent received, whichever is greater, for a violation of this Article. The Secretary of State shall consider all the following factors:

(1) The degree and extent of harm to the covered athlete and the covered athlete's educational institution, including reputational harm.

(2) The nature, gravity, and duration of the violation.

(3) Whether the violation was committed willfully.

- (4) Whether the violation reflects a continuing pattern of conduct.
- (5) Whether the violation involved elements of fraud or deception of the covered athlete, the covered athlete's educational institution, or the Secretary of State.
- (6) Whether the athlete agent breached any fiduciary duty.
- (7) Whether and the extent to which the athlete agent profited by the violation.
- (8) Any failure of the athlete agent to provide timely or complete responses to any of the following:
- a. The Secretary of State's inquiries about the athlete agent's activities.
- b. Any request for records by the Secretary of State.
- (9) Whether the athlete agent obstructed the inspection of records or any other aspect of an investigation by the Secretary of State.
- (10) Whether the athlete agent exercised reasonable diligence to comply with this Article and any rules adopted under this Article.
- (11) Whether the athlete agent reported the violation to the Secretary of State and, if so, after what period of time following the violation.
- (12) Efforts by the athlete agent to correct the violation.
- (13) Any prior violation by the athlete agent of this Article, former Articles 7, 8, or 9 of this Chapter, any rules adopted under this Article, or a similar law of any other state.
- (14) Whether the athlete agent has pleaded guilty or no contest to or has been convicted of any other crime that bears on the athlete agent's fitness to be an athlete agent but has not caused the Secretary of State to limit, suspend, revoke, or refuse to renew the athlete agent's registration under this Article.
- (15) Whether payment of the civil penalty will prevent payment of damages under G.S. 78C-126 or payment of any other relief in the nature of restitution.

(16) Any other factors that would tend to mitigate or aggravate the violation.

(b) The Secretary of State is not required to adopt rules to implement subsection (a) of this section.

(c) The clear proceeds of civil penalties imposed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

"§ 78C-128. Reserved.

"§ 78C-129. Uniformity of application and construction.

In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"§ 78C-130. Relation to Electronic Signatures in Global and National Commerce Act.

This Article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. § 7003(b)."

SECTION 3. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SECTION 4. The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comments to the Revised Uniform Athlete Agents Act (2015) and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

SECTION 5. This act becomes effective December 1, 2019, and applies to acts and omissions occurring on or after that date. Prosecutions for offenses committed before the

- 1 effective date of this act are not abated or affected by this act, and the statutes that would be
- 2 applicable but for this act remain applicable to those prosecutions.